

Honorable Leif B. Erickson
Federal Magistrate Judge
Missoula Division
Russell E. Smith Courthouse
201 East Broadway, Room 370
Missoula, MT 59802

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

GINGER HAGEMAN,

CAUSE NO. CV 06-09-M-LBE

Plaintiff,
vs.
FINDINGS AND
RECOMMENDATION OF
U.S. MAGISTRATE JUDGE

RICHARD GEBHARDT, Plains City Attorney;
CHIEF SHAWN EMMETT, Plains Police Dept.;
ERNEST CAHALA, Plains Police Officer;
JOE BROWN, County Coroner;
LAURIE SHARP, Deputy Coroner; and
ROBERT ZIMMERMAN, Sanders County Attorney,

Defendants.

Plaintiff has filed a Motion For Entry of Judgment. For the second time Plaintiff argues Defendants have not timely filed their answers and, therefore, are in default. Plaintiff also argues that any answer that Defendants have since filed is incomplete because it answers the Complaint only in Defendants' official capacities, yet Defendants are also sued in their individual capacities. She believes the answers are not filed in Defendants' individual capacities because they are filed through attorneys employed by insurance companies which represent the County and the City.

First, for the reasons stated in the Court's May 22, 2006 Findings and Recommendation Defendants are not in default and the entry of default, or default judgment, cannot be made.

Second, the fact that Defendants are represented by attorneys employed by an insurance company for the County and City does not mean that the answer filed in this case is filed only in Defendants' official capacities. To the contrary, upon review of the Answers of Defendants the Court finds they are not limited to only their official capacities. The Court finds their answers responds to all aspects of the Complaint, including both official and individual capacity claims.

The Court hereby enters the following:

RECOMMENDATION

Plaintiff's Motion for Entry of Judgment should be **DENIED**.

NOW, THEREFORE, IT IS ORDERED that the Clerk shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to these findings must be filed with the Clerk of Court and copies served on opposing counsel within ten (10) days after receipt hereof, or objection is waived.

DONE and DATED this 6th day of June, 2006.

/s/ Leif B. Erickson
Leif B. Erickson
United States Magistrate Judge